Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

DALLAS R. WILLIAMS, – *PRO SE,*

PETITIONER,

v.

COUNTY OF VENTURA; S.D. LOWRY CONSTRUCTION; S.D. LOWRY; HANK WILLIAMS; TOM BERG; W.E. WINDROTH; TOM MELUGIN; STEPHEN BALL and DOES 1 through 10,

RESPONDENTS .

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Pro Se Petitioner

Electronic Publishing – Ventura, California – 805-646-2533

80pp

QUESTIONS PRESENTED

1. Whether the consideration by the Court of Appeals of "the other issues raised" by Petitioner is inconsistent with the policies underlying the Federal Rules of Civil Procedure, specified in F.R.Civ.P. 4, 55, 58, 77.

2. Whether the Court of Appeals, dismissal for failure to state a claim of Petitioner's 42 U.S.C. 1983 action, erroneously failed to place the appropriate burden specified in F.R.Civ.P. 8, 12, to show that the only reasonable construction was that Petitioner failed adequately to allege the violations of rights protected by the Constitution.

3. Whether the Court of Appeals, concluded erroneously that Petitioner's allegations, by a licensed attorney, of a conspiracy between the County defendants and Lowry are insufficient to state a 1983 claim against Lowry.

4. Whether the Court of Appeals, erroneously concluded that Petitioner's takings clause claim was not ripe because the County does not have a state procedure for "takings" under the Fifth Amendment of the United States Constitution according to the California Supreme Court.

5. Whether the Court of Appeals, erroneously affirmed jurisdiction which was inconsistent with the polices underlying the Federal Rules of Civil Procedure, specified in F.R.Civ.P. 54(b) as to party "HANK WILLIAMS".

LIST OF ALL PARTIES BELOW

The parties to this proceeding in the court below were Dallas R. Williams and County of Ventura; S.D. Lowry Construction; S.D. Lowry; Hank Williams; Susan Lacey; Robi Klein; Jacalyn Cohen; Tom Berg; W.E. Windroth; Tom Melugin; Stephen Ball; Sharon Lewis; Betty Kane; Linda Finn; Florence Purshan; Sheila Gonzales; DOES 1 through 10, inclusive,

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OPINIONS BELOW

The opinion of the United States Court of Appeals appears at App. 1, 2, 3, 4, (9th Cir. 1998). The Court of Appeals' denials of Petitioner's petition for rehearing and suggestion for rehearing *en banc*, appears at App. 2. The opinion of the United States District Court appears at App. 5-24, and App. 30-43, are unreported.

JURISDICTION

The Court of Appeals issued its opinion on August 20, 1998, and denied Petitioner's petition for rehearing and suggestion for rehearing *en banc* on February 1, 1999. This Petition is being filed within 90 days of the denial of the petition for rehearing, as required by S.Ct. R. 13.1 and 13.3. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

This Petition involves F.R.Civ.P. 4(c)(C)(i), 5(a), 8(a)(2), 12(a). 12(b)(1), 12(b)(6), 54(b), 55(a), 77(c).

STATEMENT OF THE CASE

I. THE AGREEMENT & THE COUNTY OF VENTURA

Petitioner is the owner of the real property located in Ventura County, California commonly known as 520 Mesa Drive, Ojai, California 93023. On or about July 8, 1987, Respondents' notified Petitioner of the legal requirements for building construction on his property. A professional engineering firm was "hired" for the sum of $380.00 for compliance with all county codes.

App. 45.

On or about July 20, 1987, Respondent LOWRY, "HANK WILLIAMS" and Petitioner agreed to said construction.

"LOWRY" was a contractor, license number 432140, and "HANK WILLIAMS" was the architect and drew the "plans" for construction on July 11, 1987. App. 59. The County of Ventura "approved" said "plans" even though "HANK WILLIAMS" did not list his architect license number on any of his "plans" nor on the permit. App. 59

On or about March 6, 1992, Petitioner was "threatened" with criminal prosecution by the County, App. 48-50. Petitioner then discovered that the County and Lowry was involved in "covering up" code violations, App. 50-51.

The County's "policy, practice, custom" to approve ill-legal construction appears at App. 44-45, "It resides on a paper record that contains information that by law is to be held confidential by the Assessor."

An adjuster wrote Petitioner on December 9, 1997 and would not disclose whom employed him, App. 55, 56.

II. THE COMPLAINT

On April 11, 1997, Petitioner filed the complaint and Respondents' County filed a motion to dismiss but Respondents' Lowry submitted papers with an erroneous case number, App. 58, 56-57, 51-55 and the clerk of the Court altered the caption on May 6, 1997, App. 26, 28.

III. THE AMENDED COMPLAINT

The lower Court filed its Memorandum & Order, App. 30-43.

On August 7, 1997, Petitioner retained the services of a licensed attorney at law, App. 46-48, and filed his Amended Complaint.

The lower Court filed its Memorandum & Order, App. 7-24.

IV. THE DISTRICT COURT'S RULING

(1) that defendants' motion to dismiss the First Amended Complaint are GRANTED; and (2) that this action is DISMISSED, with prejudice as to plaintiff's claim under 42 U.S.C. 1983, and without prejudice as to plaintiff's supplemental state law claims, App. 6.

The District Court said, "Grounds for dismissal were Plaintiff's failures to: (1) establish subject matter jurisdiction, F.R.Civ.P. 8(a)(1), 12(b)(1), 12(h)(3)...(2) make a short and plain statement of his claims, F.R.Civ.P. 8(a)(2)...(3) state a congnizable federal claim, F.R.Civ.P. 12(b)(6)... (4) properly plead municipal and supervisory liability... and (5) meet the heightened pleading standard required when naming official defendants entitled to qualified immunity defense..., App. 7, 8.

V. THE COURT OF APPEALS' RULING

Petitioner appealed. The Court of Appeals said, "Williams failed to state a 1983 claim against the County and its employees for violation of his right to procedural due process because he had an adequate post-deprivation rem-

edy under California Law. Also, his claim under the taking clause was not ripe because he failed to exhaust state procedures for compensation. Further, Williams' conclusory allegations of a conspiracy between the County defendants and Lowry are insufficient to state a 1983 claim against Lowry. Accordingly, the district court properly dismissed Williams' 1983 claims because he failed adequately to allege the violations of rights protected by the Constitution. We have considered the other issues raised by Williams on appeal and conclude that they lack merit. App. 3-4.

REASONS FOR GRANTING THE WRIT

This case presents important issues of federal rules of civil procedure and the ministerial duty of the clerks of the lower court and rulings by this Court on the issues of "takings" and more explicit "regulatory takings".

The Court of Appeals AFFIRMED the judgment of the District Court concluding that "other issues raised" by Williams on appeal and conclude that they lack merit, App. 4. In reaching this result, the Court of Appeals adopted constructions of the federal rules of civil procedure which are extremely ambiguous. Indeed, the Court of Appeals did not even make any mention of what "other issues raised" were to include.

Also, the Court of Appeals concluded that Petitioner's failed to state a claim under 42 U.S.C. 1983. App. 4.

The Court of Appeals further erred (both as a matter of civil procedure) and as a matter of the opinions of this Court.

Finally, the Court of Appeals erred in affirming the issues involving Respondent "HANK WILLIAMS", App. 1-59.

The Court of Appeals' decision conflicts with decisions of this Court and "so far depart[s] from the accepted and usual course of judicial proceedings...as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

For all these reasons, this Court should grant the Petition.

I. THE COURT OF APPEALS ERRED IN AFFIRMING JUDGMENT FOR RESPONDENTS'

Eastern Enterprises v. Apfel, No. 97-42 (1998), U.S. __ __ (1998) A regulation's constitutionality is evaluated by examining the governmental action's "justice and fairness." *See Andrus v. Allard*, 444 U.S. 51, 65. Although that inquiry does not lend itself to any set formula, three factors traditionally have informed this Court's regulatory takings analysis: "the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action." *Kaiser Aetna v. United States*, 444 U.S. 164, 175. Pp. ___.

Petitioner has been denied "justice and fairness" and the economic impact has been a total loss in securing a loan, [the property is paid off], in selling the property, and in transfer of property. Plaintiff is subject to criminal prosecution. App. 48-50.

Cases attempting to decide when a regulation becomes a taking are among the most litigated and perplexing in current law. *See Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 123 (1978) ("The question of what constitutes a ''taking' for purposes of the Fifth Amendment has proved to be a problem of considerable difficulty"); *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979) (the regulatory taking question requires an "essentially *ad hoc* factual inquir[y]"). Until today, however, one constant limitation has been that, in

all of the cases where the regulatory taking analysis has been employed, a specific property right or interest has been at stake. right to transfer property by devise or intestacy, *e.g., Hodel v. Irving,* 481 U.S. 704 (1987);); right to sell personal property, *Andrus v. Allard,* 444 U.S. 51 (1979); our regulatory takings analysis recognizes a taking may occur when property is not
appropriated by the Government, or is transferred to other private parties.
See, e.g., United States v. Security Industrial Bank, 459 U.S. 70, 78 (1982) ("[O]ur cases show that takings analysis is not necessarily limited to outright acquisitions by the government for itself"); *Loretto, supra* (transfer of physical space from landlords to cable companies).
United States v. Causby, 328 U.S. 256 (1946), the Government ought not to have the capacity to give itself immunity from a takings claim by the device of requiring the transfer of property from one private owner directly to another. *Cf. Hawaii Housing Authority v. Midkiff,* 467 U.S. 229 (1984).
Suitum v. Tahoe Regional Planning Agency, No. 96-243 (1997) U.S. ___ ___ (1997) The only issue presented is whether Suitum's claim of a regulatory taking of her land in violation of the Fifth and Fourteenth Amendments is ready for judicial review under prudential ripeness principles. *Agins v. City of Tiburon,* 447 U.S. 255 (1980), is the first case in which this Court employed a notion of ripeness in declining to reach the merits of an as-applied regulatory taking claim. Whereas, once there *is* a taking, the Constitution requires just (*i.e.,* full) compensation, *see, e.g., United States v. 564.54 Acres of Monroe and Pike County Land,* 441 U.S. 506, 510 (1979) (owner must be put "'in as good a position pecuniarily as if his property had not been taken'"); *Monongahela Nav. Co. v. United States,* 148 U.S. 312, 326 (1893) ("the compensation must be a full and perfect equivalent for the property taken"), a regulatory taking generally does not *occur* so long as the land retains substantial (albeit not its full) value, *see, e.g., Penn Central Transp. Co. v. New York City,* 438 U.S. 104 (1978).

Parking Assn. Of Georgia, Inc. v. City of Atlanta, 515 U.S. 1116 (1995) Because the petition poses a substantial federal question concerning regulatory takings and because there is confusion in the lower courts, I would grant certiorari.

Lucas v. So. Carolina Coastal Council, 505 U.S. 1003 (1992) (a) Regulations that deny the property owner all "economically viable use of his land" constitute one of the discrete categories of regulatory deprivations that require compensation without the usual case-specific inquiry into the public interest advanced in support of the restraint. (c) Rather, the question must turn, in accord with this Court's "takings" jurisprudence, on citizens' historic understandings regarding the content of, and the State's power over, the "bundle of rights" that they acquire when they take title to property. In 70-odd years of succeeding "regulatory takings" jurisprudence, we have generally eschewed any "'set formula'" for determining how far is too far, preferring to "engag[e] in . . . essentially *ad hoc*, factual inquiries," *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978) (quoting *Goldblatt v. Hempstead*, 369 U.S. 590, 594 (1962)). *See* Epstein, Takings: Descent and Resurrection, 1987 Sup.Ct. Rev. 1, 4.

Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987)
The Clause is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking. "Temporary" regulatory takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings for which the Constitution clearly requires compensation. This appeal followed, and we noted probable jurisdiction. 478 U.S. 1003 (1986).

Appellant asks us to hold that the California Supreme Court erred in *Agins v. Tibron* in determining that the Fifth Amendment, as made applicable to the States through the Fourteenth Amendment, does not require compensation as a remedy for "temporary" regulatory takings -- those regulatory takings which are ultimately invalidated by the courts. Four times this decade, we have considered similar claims and have found ourselves, for one reason or another, unable to consider the merits of the *Agins* rule.
See MacDonald, Sommer & Frates v. Yolo County, 477 U.S. 340 (1986); *Williamson County Regional Planning Comm'n v. Hamilton Bank,* 473 U.S. 172 (1985);
San Diego Gas & Electric Co., supra; Agins v. Tiburon, supra.
For the reasons explained below, however, we find the constitutional claim properly presented in this case, and hold that, [482 U.S. 311] on these facts, the California courts have decided the compensation question inconsistently with the requirements of the Fifth Amendment.

CONCLUSION

For all the reasons set forth above, Petitioner respectfully Requests that this Court grant the Petition and reverse the judgment of the Court of Appeals.

Respectfully Submitted,

/S/

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Petitioner, Pro Se

APPENDIX

United States Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES DISTRICT COURT
CENTRAL CALIFORNIA

ENTERED FEB 18 1999 - CLERK

Civil Action

NO. 98-55277 CV-97-02487-ABC(SH)

DALLAS R. WILLIAMS, Plaintiff\Appellant

v.

COUNTY OF VENTURA; S.D. LOWRY CONSTRUCTION; S. D. LOWRY; HANK WILLIAMS; TOM BERG; W. E. WINDROTH; TOM MELUGIN; STEPHEN BALL, Defendants\Appellees

JUDGMENT

APPEAL FROM the United States District Court for the Central District of California, Los Angeles

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED

United States Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES DISTRICT COURT
CENTRAL CALIFORNIA

ENTERED FEB 1 1999 - CLERK

Civil Action

NO. 98-55277 CV-97-02487-ABC(SH) Central California

DALLAS R. WILLIAMS, Plaintiff\Appellant
v.
COUNTY OF VENTURA; S.D. LOWRY CONSTRUCTION; S. D. LOWRY; HANK WILLIAMS; TOM BERG; W. E. WINDROTH, TOM MELUGIN; STEPHEN BALL, Defendants\Appellees

ORDER

Before: T.G. NELSON, KLEINFELD & HAWKINS, Circuit Judges

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.
The full court has been advised of the suggestion for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. See Fed.R.App.P.35.
Accordingly, the petition for rehearing is denied, and the suggestion for rehearing en banc is rejected. No further filings will be accepted in this closed appeal.

NOT-FOR-PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Civil Action

No. 98-55277 - D.C. No. CV-97-02487-ABC(SH)

UNITED STATES DISTRICT COURT
CENTRAL CALIFORNIA

FILED FEB 17 1999 - CLERK

DALLAS R. WILLIAMS, Plaintiff\Appellant,
v.
COUNTY OF VENTURA; S.D. LOWRY CONSTRUCTION; S.D. LOWRY; HANK WILLIAMS; TOM BERG; W.E. WINDROTH; TOM MELUGIN; STEPHEN BALL,
Defendants\Appellees.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted October 20, 1998**
Before: T.G. NELSON, KLEINFELD, & HAWKINS,
Circuit Judges.

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R.34-4.

Dallas R Williams appeals pro se the district court's dismissal for failure to state a claim of his 42 U.S.C 1983 action against the County of Ventura, County employees and private construction contractor Stephen Lowry alleging deprivation of property in violation of the Fourteenth Amendment and various state law claims. We have jurisdiction under 28 U.S.C § 1291. We review de novo a dismissal for failure to state a claim, *see Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, *1295* (9th Cir. 1998), and we affirm.

Williams failed to state a § 1983 claim against the County And Its employees for violation of his right to procedural due process because he had an adequate post-deprivation remedy under California law. *See* Cal. Gov't Code §§ 8 10-853; *see also Lake Nacimiento Ranch Co. v. San Luis Obispo County,* 841 F.2d 872, 878 (9th Cir. 1988). Also, his claim under the takings clause was not ripe because he failed to exhaust state procedures for compensation. *See* Cal. Const art I, § 19; *see also Lake Nacimiento Ranch Co.,* 841 F.2d at 874. Further, Williams's conclusory allegations of a conspiracy between the County defendants and Lowry are insufficient to state a § 1983 claim against Lowry. *See* *Price* v. *State of Hawaii,* 939 F.2d 702, 707-09(9th Cir. 1991).

Accordingly, the district court properly dismissed Williams's 1983 claims because he failed adequately to allege the violations of rights protected by the Constitution. See Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 370 (9th Cir. 1996)

We have considered the other issues raised by Williams on appeal and conclude that they lack merit. AFFIRMED.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir.R.34-4.

Submission without oral on August 6, 1998.

United States District Court
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Civil Action

DALLAS R. WILLIAMS, CV 97-2487-ABC (SH)
Plaintiff,
v.
COUNTY OF VENTURA, et al,
Defendants.

UNITED STATES DISTRICT COURT
CENTRAL CALIFORNIA

FILED JAN 6 1998 - CLERK

JUDGMENT

Pursuant to the Order of the Court approving the Final Report and Recommendation of the United States Magistrate Judge, and adopting the fingings of fact and conclusions of law therein,

IT IS ADJUDGED that Judgment be entered dismissing all of plaintiff's federal claims herein with prejudice, and dismissing plaintiff's supplemental state law claims without prejudice.

Dated: January 6, 1998

AUDREY B. COLLINS /s/
UNITED STATES DISTRICT JUDGE

United States District Court
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DALLAS R. WILLIAMS,
Plaintiff,
v.
COUNTY OF VENTURA, et al,
Defendants.

Civil Action
CV 97-2487-ABC (SH)

UNITED STATES DISTRICT COURT
CENTRAL CALIFORNIA

ENTERED JAN 8 1998 - CLERK

O R D E R ADOPTING REPORT & RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has reviewed the Petition, the records and files herein, and the attached Report & Recommendation of the United States Magistrate Judge. The Court concurs with and adopts the findings and conclusions of the Magistrate Judge, and **O R D E R S** as follows:

(1) that defendants' motions to dismiss the First Amended Complaint are GRANTED; and (2) that this action is DISMISSED, with prejudice as to plaintiff's claim under 42 U.S.C. 1983, and without prejudice as to plaintiff's supplemental state law claims.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: January 6, 1998

AUDREY B. COLLINS /s/
UNITED STATES DISTRICT JUDGE

United States District Court
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DALLAS R WILLIAMS, No. CV 97-2487-ABC (SH)
Plaintiff,
v.
COUNTY OF VENTURA, et al.,
Defendants.

UNITED STATES DISTRICT COURT
CENTRAL CALIFORNIA
FILED DEC 5 1997 - CLERK

REPORT & RECOMMENDATION OF UNITED STATES MAGSTRATE JUDGE

This Report and Recommendation is submitted to United States District Judge Audrey B. Collins, pursuant to 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California. For the reasons discussed herein, the Magistrate Judge recommends that the action be dismissed.

I. PROCEEDINGS.

On April 11, 1997, pro se plaintiff Dallas R. Williams filed his original Complaint alleging deprivation of property in violation his Fourteenth Amendment righs, and naming as defendants, a private contractor, Stephen D. Lowry (as an individual, under the business Name S.D. Lowry Construction, and under the fictitious name "Hank Williams"), along with the County of Ventura and two groups of county employees ("County defendants"). On May 6, 1997, defendants filed three motions to dismiss. Plaintiff filed a single Opposition on May 19, 1997. Defendant Lowry replied on May 28, 1997.

The Court ordered the Complaint dismissed, with leave to amend. (See Memorandum & Order ["M&O"] filed July 21, 1997. Grounds for dismissal were plaintiff's failures to:

(1) establish subject matter jurisdiction, Fed.R.Civ.P.8(a)(1), 12(b)(1), 12(h)(3), Local Rule 3.7.1 (M&O at 2-3); (2) make a short and plain statement of his claims, Fed.R.Civ.P.8(a)(2) (M&O at 3-4); (3) state a cognizable federal claim, Fed.R.Civ. P. 12(b)(6) (M&O at 5-11); (4) properly plead municipal and supervisory liability (M&O at 11); and (5) meet the heightened pleading standard required when naming official defendants entitled to a qualified immunity defense (M&O at 11).

On September 2, 1997, plaintiff filed his First Amended Complaint ("FAC"), again naming defendant "Lowry" (as S.D. Lowry Construction, Stephen D. Lowry, "Hank Williams," and "Doe" employees 6-10), along with a smaller group of County def-endants: Ventura County and "County employee defendants" Tom Berg, W.E. Windroth, Tom Melugin, Stephen Ball, and "Does" *1-5*.

All defendants moved again to dismiss. The County defendants filed the first motion to dismiss ("1st MTD") on August 27, 1997. A second motion to dismiss was filed by "Soltman & Meara," as attorneys for defendant Lowry, on September *5*, 1997. A third motion to dismiss, which was not timely served, was lodged on September 10, 1997, by "Law Offices of Frederikson, Mazeika & Grant," also as attorneys for defendant Lowry. On September 4, 1997, plaintiff filed an Opposition, along with an otherwise identical Motion to Strike, addressing only the County defendants' failure to timely serve co-defendants.

The Court (1) ordered the third motion to dismiss filed as of the date lodged; (2) granted plaintiff additional time to file a single supplemental opposition to all three motions; (3) ordered plaintiff to address the merits of the motions, in particular, the argument (discussed in the M&O) that his claim is barred under the Parratt/Hudson doctrine; (4) granted defendants until October 6, 1997, to reply to any supplemental opposition; and *(5)* ordered defendant Lowry's attorneys to show cause why two law firms were filing separate motions on Lowry's behalf. (See Minute Order, Sept. 12, 1997.)

Plaintiff filed his Single Supplemental Opposition ("Opp.") on September 17, 1997. On behalf of defendant Lowry, attorneys Soltman & Meara filed a Reply (on Sept. 17, 1997), and a Declaration in response to the Court's Order to Show Cause (on Oct. 6, 1997). No other replies have been filed, and this matter has been taken under submission without oral argument.

II. THE PARTIES' CONTENTIONS.

A. PLAINTIFF'S FACTUAL ALLEGATIONS.

Plaintiff alleges that, on July 20, 1987, he agreed to a proposal by S.D. Lowry Construction, owned by Stephen D. Lowry, to construct a room addition at a cost of $13,850. Lowry prepared and submitted the "Application and Permit" and the plans to the Ventura County Division of Building and Safety. Construction began in August, and was completed in October of 1987, at which time plaintiff paid in full. (FAC at 2-4, ¶ 6-7, *15*-14, 23, 26; copies of Proposal, and Application and Permit, attached to Opp.')1

Construction plans were approved by defendant Windroth, a County Building and Safety employee, on July 20, 1987, and a permit was issued on July 21, 1987. The County charged a plan review fee of $83.08 and a permit fee of $179.20. Other Building and Safety employees -- defendants Berg, Melugin, and Ball -- conducted inspections during construction, and the construction received final approval by site inspectors in October of 1987. (FAC at 2-4, ¶¶ 9, 18-19, 24-25).

The proposal and application listed "Hank Williams" as architect, but did not include a state license number. Plaintiff alleges that "Hank Williams" is a fictitious name, used by defendant Lowry, and that defendant Windroth knew this when he approved the plans and issued the permit. (FAC at 2-4, ¶11 8, 19, 22.)

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1 Also attached to the Opposition is a copy of a Ventura County 'Notice of Noncompliance" and signed by defendant Melugin,

Plaintiff alleges that the plans and construction did not comply with the Ventura County Building Code with regard to "roof and room support beams and framing," but plaintiff does not identify specific Code sections or provisions. Plaintiff further alleges that Lowry knew of this lack of compliance, and that Ventura County, "by policy or custom, does not supervise, oversee, and direct the plan review work of its employees." (FAC at 3-4, ¶¶18,21-24.

At an unspecified time, the roof and ceiling of the room addition began to sag, causing plaintiff to lose "the safe use of the room addition" as well as either a loss in property value or the cost of repairs, estimated by a contractor (in April of 1996) at $17,575. At that time, plaintiff first learned that the construction did not comply with the Code. He has not been compensated for his loss. (FAC at 4, ¶¶ 27-30.)

B. PLAINTIFF'S LEGAL CLAIMS.

Plaintiff claims that these factual allegations support five causes of action against defendants, namely, claims under 42 U.S.C. § 983 for (1) depriving him and (2) conspiring to deprive him of his civil rights; and state law claims for (3) negligence, (4) fraud, and (5) breach of warranty. (FAC at 1.) With regard to the § 1983 claims, plaintiff alleges that defendant Lowry conspired with the County employee defendants, who acted under color of state law, to deprive him of property without due process of law, in violation of the Fourteenth Amendment. (FAC at 5-7.) Plaintiff further alleges that the County is liable under § 1983 for a municipal "policy or custom" of not supervising, overseeing, or directing its employees in reviewing construction plans. (FAC at 3, ¶ 18.) Plaintiff alleges subject matter jurisdiction over his claims Under 28 U.S.C. §§ 1331 and 1343 (§ 1983 claims), and § 1367 (state law claims). (FAC at 1, ¶ 1.)

C. DEFENDANTS' CONTENTIONS.

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canceling a permit for defendant Lowry's property because of failure have required inspections. Also attached is an unidentified diagram apparently showing problems in plaintiffs roof.

Defendants have filed three motions to dismiss the First Amended Complaint, pursuant to Fed.R.Civ.P. 12(b)(6), for failure to state a claim upon which relief can be granted. The County defendants contend that plaintiff's § 1983 claim is barred on four grounds: (1) the claim for (random and unauthorized) deprivation of property is barred under the Parratt/Hudson doctrine; (2) the claim is time-barred; (3) defendants are entitled to qualified immunity; and (4) plaintiff has failed to allege liability under a municipal policy or custom. (1st MTD, passim.) In the second motion, defendant Lowry argues that the § 1983 claim is barred because it fails to show: (1) any action by Lowry under color of law, or (2) any const-itutional deprivation. In the third motion, Lowry echoes the County defendants' first ground, and joins in their motion.[2]

III. STANDARD OF REVIEW

A motion to dismiss under Fed.R.Civ.P. 12(b)(6) tests the legal sufficiency of a statement of claim for relief. A complaint may be dismissed for failure to state a claim based on either the lack of a cognizable legal theory or insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). A complaint may also be dismissed for failure to state a claim if it discloses some fact that will necessarily defeat the claim. Franklin v. Murphy, *745* F.2d 1221, 1228-29 (9th Cir. 1984).

To determine whether a complaint states a claim on which relief may be granted, allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1990). A complaint should be dismissed if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.

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2 The Opposition consists of irrelevant case citations and garbled quotations from the M&O.

Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 104 L.Ed.2d 338 (1989); Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229,81 L. Ed. 2d 59 (1984).

IV. DISCUSSION

The Court's jurisdiction over this action depends on plaintiffs claim under 42 U.S.C. § 1983. Only that claim is addressed in the motions to dismiss and in the discussion below. To state a claim under § 1983, plaintiff must allege: (1) that defendants acted under color of state law; and (2) that defendants' conduct deprived him of rights secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. *527,* 535, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327, 330-3 1, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986); Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988); Havgood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985)(en banc), cert. denied, 478 U.S. 1020 (1986). Section 1983 does not provide a cause of action for mere violations of state law. Lovell v. Powav Unified Sch. Dist., 90 F.3d 367, 370 (9th Cir. 1996). For the reasons discussed below, plaintiff has failed to state any deprivation of federal rights giving rise to a cognizable § 1983 claim.[3]

A. FAILURE TO STATE A DUE PROCESS PROPERTY DEPRIVATION.

Plainitff alleges that he was denied his Fourteenth Amend- Right not to be deprived of property without due process of law. The preliminary inquiry on the 1983 claim is whether Plaintiff was deprived of a right secrued by the Constitution, and was not merely the victim of a tort.

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3 Because the issues discussed below are dispositive of plaintiff's § 1983 claim, the Court does not, and need not, reach defendants' statute of limitations argument.

See Baker v. McCollan, 443 U.S. 137, 146-48, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979)4 The Due Process Clause of the Fourteenth Amendment encompasses three types of protection: (1) specific protections, defined in the Bill of Rights, extended to the states; (2) "substantive due process" barring "certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them"; and (3) procedural due process, guaranteeing fair procedures. Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990). To state a § 1983 claim for denial of due process under the Fourteenth Amendment, plaintiff must articulate a claim under one of these alternatives.

Plaintiff claims that defendants deprived him of property without due process when they improperly approved building plans and construction. This claim does not involve any independent Constitutional right incorporated in the Due Process Clause. Nor does it involve the sort of exreme, arbitrary deprivation that could be a denial of substantive due process. If so, a substantive due process claim could be stated any time a plaintiff lost money because an oficial erroneously approved an application.

It appears that plaintiff is attempting to state a procedural due process claim, i.e., that he was denied fair procedures when defendants deprived him of his property. However, in a procedureal due process claim, the deprivation of a property interest "is not in itself unconstitutional;

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4 "Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be brought in state court under traditional tort-law principles.... [¶] Having been deprived of no rights secured under the United States Constitution, respondent had no claim cognizable under § 1983." Id.

what is unconstitutional is the deprivation of such an interest without due process of law." Zinermon, 494 U.S. at 125 (emphasis in original; citations omitted). "The constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." Id. At 126. To determine whether a constitutional violation occurred, the court must examine whether the State provided any constitutionally adequate remedial process, including "any remedies for erroneous deprivations provided by [state] statute or tort law." Id.
If the state action complained of was random and unauthrized, due process is satisfied if the state provides a meaningful post-deprivation remedy for the loss. See Zinermon, 494 U.S. at 128-130; Hudson v. Palmer, 468 U.S. *517, 533,* 536, 104 S. Ct. 3194,82 L.Ed. 2d393 (1984); Parratt, 451 U.S. at 541 (overruled on othergrounds). One such constitutionally adequate post-deprivation remedy is provided under the California Tort Claims Act, Cal. Gov't Code §§ 810 et seq. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994)(per curiam)(dismissal of § 1983 property deprivation claim proper because Tort Claims Act provides adequate remedy).
Under Zinermon, there are three preconditions for applying the Parratt/Hudson doctrine: (1) the action must have been unpredictable (i.e. random); (2) pre-deprivation procedures would have been impotent to prevent the particular conduct; and (3) the conduct must have been unauthorized, i.e. not Within the official's express or implied authority.
See Caine v. Hardy, 943 F.2d 1406, 1413 (5th Cir. 1991), cert. Denied, 503 U.S. 936 (1992) citing Zinermon.
An action is "random" if it is not foreseeable to the state (not to the offending official). Zinermon, 494 U.S. at 130. An official is not "authorized" to misuse or ignore regulations. Caine, 943 at 1414.

This case falls within the Zinermon preconditions. The actions under color of law, which plaintiff claims deprived him of property without due process, consist of (1) the direct actions of the County employee defendants who approved allegedly illegal permits and construction; and (2) the alleged conspiracy of defendant Lowry and the County employee defendants to commit these actions. These acts were random, because the state could not have predicted that these particular officials would commit the alleged violations, or that they would conspire with a private person to do so. These acts were unauthorized, because the defendants allegedly violated and conspired to violate the very laws the County employee defendants were charged with applying. It would have been impossible for the government (County or State) to provide a meaningful pre-deprivation process to prevent such violations or conspiracies to commit them.
Therefore, the Parratt/Hudson doctrine applies to plaintiff's claims, and his factual allegations do not state a due process violation unless he was denied an adequate post-deprivation remedy. However, plaintiff has not alleged that the remedies provided by California law (the Tort Claims Act in particular, and tort law in general), were inadequate, nor has he alleged that he filed an administrative complaint or sought a remedy in state court. Thus, even if plaintiff's factual allegations are true, and defendants did the wrongful acts alleged, he has not stated a procedural due process claim cognizable under § 1983.

B. ADDITIONAL DEFECTS IN THE § 1983 CLAIM.

Plaintiff's failure, under the Parratt/Hudson doctrine, to state a procedural due process claim suffices to bar his § 1983 cause of action. The issues discussed below, when taken together are also dispositive of the 1983 claims against all defendants, severally.

1. Action (by Lowry) Under Color of Law.

To be liable under § 1983, defendants must have acted under color of state law. Generally, private parties are not acting under color of state law. See Price v. Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991), cert. denied, 503 U.S. 938 (1992). Plaintiff states that Lowry owned a private construction business, and does not allege that Lowry acted as a government official or contractor. The only support for the claim that Lowry acted under color of law is the allegation that he conspired with County employees.

A private individual may be liable under § 1983 for conspiring with a government *official* to deny someone's constitutional rights. See Dennis v. Sparks, 449 U.S. 24, 27-29, 10 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980); Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir. 1996); United Steel Workers v. Phelps Dodge Corp., 865 F.2d 1539, 1540 (9th Cir.)(en banc), cert. denied, 493 U.S. 809 (1989). However, to show that such a conspiracy existed, plaintiff must allege an agreement or meeting of minds among the defendants to violate constitutional rights. Taylor v. List, 880 F.2d 1040, 1048 (9th Cir. 1989); Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989); United Steel Workers, ***865*** F.2d at 1540-41. Plaintiff must allege specific facts showing such an agreement or meeting of the minds. See Woodrum, 866 F.2d at 1126. Conclusory allegations of a conspiracy are insufficient to support a claim under § 1983, See Price, 939 F.2d at 708-09; Woodrum, 866 F.2d at 1126; Schucker v. Rockwood, 846 F.2d 1202, 1205 (9th Cir.), cert. denied, 488 U.S. 995 (1988).

Plaintiff simply makes conclusory allegations that defendants conspired. He does not allege any specific facts to support that conclusion. On their face, plaintiffs factual allegations support a claim that County employees negligently approved non-compliant paperwork and construction.

2. Qualified Immunity (County employees)5

The County employee defendants contend that they are entitled to dismissal based on the defense of qualified immunity. (1st MTD). Qualified immunity shields a defendant government official from suit for damages if a reasonable officer in the defendant's position could have believed his or her conduct was lawful in the light of clearly established law and the information the officer possessed at the time the conduct occurred. Hunter v. Bryant, *502* U.S. 224, 227, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991)(per curiam); Anderson v. Creighton, 483 U.S. *635,* 641, 107 S. Ct. 3034, 97 L.Ed. 2d 523 (1987).

Deciding whether a defendant is entitled to qualified immunity involves a three-step test: (1) identifying the specific right implicated; (2) determining whether that right was so clearly established as to alert a reasonable officer to its constitutional parameters; and (3) determining whether a reasonable officer could have believed the challenged conduct was lawful. Kelley v. Borg, 60 F.3d 664, 666 (9th Cir. 1995). A court must resolve the first two inquiries before considering the third.

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5 Private individuals (such as defendant Lowry) who allegedly conspire with officials to violate constitutional rights are not entitled to qualified immunity to § 1983 actions. Wyatt v. Cole, 504 U.S. 158, 168-69, 112 S. Ct. 1827, 118 L. Ed. 2d *504* (1992). Municipal entities (such as Ventura County) are not entitled to a qualified immunity defense to § 1983 actions. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166, 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993) (unanimous opinion). Nor are municipal entities able to rely on qualified immunity defenses available to their employees. See Hervey v. Estes, 65 F.3d 784, 791 (9th Cir. 1995).

Romero v. Kitsap County, 931 F.2d 624, 628 (9th cir. 1991). If The court determines that no clearly-established right is implicated, the court should dismiss any 1983 damages claims. Anderson, 483 U.S. at 646-47 n.6.

The operation of the qualified immunity test depends substantially on the level of generality of the "specific right" allegedly violated. Anderson, 483 U.S. at 639. Although the right to due process of law is "clearly established," this right is too abstract and generalized to be useful in a qualified immunity analysis. Id. at 639-40. On the other hand, qualified immunity analysis does not require that the "very action in question has previously been held unlawful,. . ." Id. at 640. Rather, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Due process violations must be particularized before they can be subjected to the "clearly established" test. Kelley 60 F.3d at 667 (particularized right under Eighth Amendment to have prison officials not be deliberately indifferent to serious medical needs), citing Camarillo v. McCarthy, 998 F.2d 638, 640 (9th Cir. 1993)(same).

The specific actions in question are: (1) the approval of plans and issuance of a building permit by defendant Windroth; and (2) the site inspections and final approval by defendants Berg, Melugin, and Ball all allegedly in violation of the Building Code.

Plaintiff claims that, by these actions, these defendants deprived him of property without due process of law. The right involved here would not be the generalized guarantee against deprivation ofproperty without due process, but rather a "particularized right," such as a guarantee against being deprived of property by officials acting in violation of the regulations they are charged to enforce i.e., a constitutional

Guarantee against "random" and "unauthorized" property deprivations by officials. However, plaintiff has not shown that such a particularized right was clearly established in federal law at the time of the alleged deprivations. On the contrary, as discussed above, at that time (1987) it was clearly established U.S. Supreme Court Law, under Parratt v. Taylor (1981), Hudson v. Palmer (1984), etc., that there is no constitutional protection against "random" and "unauthorized" property deprivations, as such. Instead, the right to due process guarantees an opporunity to remedy such deprivations, and plaintiff was not denied that right.

3. Heightened Pleading (County employees).

Even if plaintiff is correct in his allegations that the County employee defendants improperly approved paperwork and construction in his case, they might have done so merely negligently. Mere negligence is not a sufficient basis for a due process deprivation, even apart from the Parratt/Hudson doctrine. Daniels, supra, 474 U.S. at 328 ("the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property"). To implicate the Due Process Clause, the deprivation must be deliberate. Id. at 331.

Thus, plaintiffs § 1983 claim, that the actions of the County employee defendants amounted to a due process property deprivation, necessarily involves further allegations, namely that these defendants acted intentionally or deliberately. However, when a plaintiff raises a claim, such as this one, involving the subjective intent of official defendants entitled to assert a qualified immunity defense, under Ninth Circuit law the plaintiff must meet the "heightened pleading standard which requires nonconclusory allegations setting forth specific evidence of unlawful intent." Housley v. United States, 35 F.3d 400, 401 (9th Cir. 1994);

See also Branch v. Tunnell (Branch II), 14 F.3d 449, *452* (9th Cir.), cert. denied, 512U.S. 1219,(1994);Branch v.Tunnell (Branchl),937 F.2d 1382, 1386 (9th Cir. 1991).

Here plaintiff has not set forth any such "nonconclusory allegations" or "specific evidence of unlawful intent." With respect to defendants Berg, Melugin, and Ball, plaintiff has simply alleged that they inspected the allegedly faulty construction, approved it, and were not properly supervised. (FAC at 4, ¶ 24.) Plaintiff does not even allege any unlawful intent on the part of Berg, Melugin, or Ball. Plaintiff makes the conclusory allegation that defendant Windroth approved the noncompliant application, knowing that the purported architect ("Hank Williams") was, in fact, defendant Lowry. (FAC at 3, ¶ 21.) However, plaintiff does not set forth any specific evidence or allegations of fact to support this conclusion.

Plaintiff apparently discovered in 1996 the allegedly non-compliant paperwork and construction. From this he appears to simply infer that the County employee defendants knew of, and deliberately or intentionally ignored the violations in 1987. This is not sufficient to meet the heightened pleading standard required by Ninth Circuit law with regard to the subjective intent of official defendants entitled to claim qualified immunity.

4. **Municipal Policy or Custom (Ventura County).**

Plaintiff also names Ventura County as a defendant. A municipal entity, such as a county, is not liable for torts committed by employees simply by virtue of being their employer, under a theory of respondeat superior. Board of County Comm'rs of Bryant County v. Brown ("Brown"), — U.S. ___, 117 S. Ct. 1382, 1387-88, 137 L. Ed. 2d 626 (1997)(citations omitted). Instead, a plaintiff asserting a municipality's liability on a § 1983 claim must identify a municipal "policy" or "custom" that allegedly caused the plaintiffs injury, Brown, 117 S. Ct. at 1388; Monell v. Dep't of Soc. Serv., 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

"Locating such a 'policy' ensures that a municipality is held liable only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality."

Brown 117 5. Ct. at 1388; citing Monell, 436 U.S. at 694. A plaintiff may demonstrate that a municipal policy exists, based on showing that one of three alternatives applies. (1) The governing body of the local government unit has formally adopted the rule or regulation which gave rise to the alleged constitutional violation. (2) An official of the local governmental unit who had final decision-making authority made a choice among alternatives which gave rise to the alleged constitutional violation. (3) An official of the local governmental unit who had final decision-making authority ratified the decision of a subordinate where the subordinate's decision gave rise to the alleged constitutional violation. See Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992) (per curiam), cert. denied, 510 U.S. 932 (1993)(citations omitted); cf. Fuller v. City of Oakland, 47 F.3d 1522, 1534 (9th Cir. 1995). "[M]ere failure to investigate the basis of a sub-ordinate's discretionary decisions" is not a ratification of those decisions."

City of St. Louis v. Praprotnik, 485 U.S. 112, 130, 108 S. Ct. 915, 99 L. Ed. 2d. 107 (1988). Mere acquiescence in a single instance of alleged unconstitutional conduct is also not sufficient to demonstrate ratification of a subordinate's acts. Gillette, 979 F.2d at 1348.

In the absence of an explicit policy, a plaintiff may establish municipal liability by showing a permanent and well-settled practice or custom by the municipality, which gave rise to the alleged constitutional violation. Praprotnik, 485 U.S. at 127; Navarro v. Block, 72 F.3d 712, 714-15 (9th Cir. 1996). Municipal liability for an act performed pursuant to such a "custom" is premised "on the theory that the relevant practice is so widespread as to have the force of law." Brown, 117 S. Ct. at 1388; citing Monell, 436 U.S. at 690-91. Random acts, or single instances of misconduct, however, are insufficient to establish a municipal custom. Navarro, 72 F.3d at 714.

Furthermore, even if a § 1983 plaintiff can identify a relevant municipal policy or custom, such that action taken pursuant to the policy or custom is attributable to the municipality, he "must also demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." Brown, 117 S. Ct. at 1388. That is, with respect to the municipal conduct (represented by the policy or custom itself) the plaintiff must show both culpability (i.e., at least deliberate indifference) on the part of the County, and causality (i.e., "a direct causal link" between the municipal policy or custom and the deprivation of federal rights). Brown, 117 S. Ct. at 1388-93.

Plaintiff has not alleged that the governing body of Ventura County has formally adopted a policy of approving construction in violation of the Building Code, nor has he alleged that any official, with authority to set County policy, either adopted or ratified any such policy. Furthermore, plaintiff has not shown any actionable municipal "custom." He has only alleged official misconduct in a single instance, with regard to himself. He has made no showing that there was any general, well-settled County practice of improperly approving permits or construction.

Plaintiff has simply alleged, vaguely, that the County does not adequately supervise, oversee, or direct employees who review building permit applications and construction. Even if such a claim is sufficient to allege a "policy or custom," plaintiff has not alleged either the necessary culpability (i.e. any basis for showing that this "policy or custom" arose from deliberate indifference to violations such as plaintiff claims), or the necessary causation (i.e. any factual allegations supporting the claim that this "policy or custom" directly caused the County employees' alleged actions in his case).

Plaintiffs allegations do not show any relevant County policy or custom, any culpability on the County's part of the County, or how any County policy or custom caused his injuries. Therefore, he has failed to state a § 1983 claim against Ventura County.

D. **DENIAL OF FURTHER LEAVE TO AMEND.**

In pro se civil rights cases, pleadings should be construed liberally

and so as to afford the plaintiff the benefit of any doubt as to the potential viability of the claims asserted. Karim-Panahi 839 F.2d at 621. Pro se litigants must be given leave to amend unless it is clear that the deficiencies cannot be cured by amendment. Id. However, if careful consideration of the allegations and theories discloses that no cognizable claim can be stated, the court may properly conclude that amendment would be futile and may dismiss a complaint with prejudice.
Cato v. United States, 70 F.3d 1 103, 1105-06 (9th Cir. 1995). Plaintiff had the right to amend once, "as a matter of course," but otherwise may amend "only by leave of court or by written consent of the adverse party." Fed.R.Civ.P. 15(a); Outdoor Systems. Inc. v. City of Mesa, 997 F.2d 604, 613-14 (9th Cir. 1993). Granting or denying leave to amend rests in the discretion of the trial court. Swanson v. U.S. Forest Service, 87 F.3d 339, 343 (9th Cir. 1996). The court's discretion is particularly broad when the plaintiff has previously been granted leave to amend. Sisseton-Wahpeton Sioux Tribe v. United States, 90 F.3d 351, 355 (9th Cir.), cert denied, 117 S. Ct. 516 (1996).
Here it is clear that petitioner cannot amend his § 1983 claim, in a manner consistent with his factual allegations, sufficiently to overcome the defects discussed above. Plaintiff was clearly notified of these defects in the Court's Memorandum and Order dismissing the original Complaint with leave to amend. He had the opportunity to cure these defects in his First Amended Complaint, and his failure to do so confirms that further amendment would be futile.
Plaintiffs § 1983 claim was the only arguable basis for the Court's subject-matter jurisdiction over this action. If the Court dismisses plaintiffs only federal claim, it should exercise its discretion, under 28 U.S.C. § 1367(c)(3), to also dismiss, without prejudice, plaintiff's supplemental state law claims.[6] United Mine Workers v. Gibbs, 383 U.S. 715, 726,86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966);Acri v. Varian Associates, Inc., 114 F.3d 999, 1000 (1997)(en banc).

Although plaintiffs allegations do not support a § 1983 claim, or any other basis for federal subject-matter jurisdiction, they may well support tort or contract claims against defendants in state court. It is in plaintiffs best interest, to pursue such claims in state court, where a remedy may be available to him. This action may be meritorious, but it simply does not belong in federal court.

V. RECOMMENDATION.

For all of the reasons discussed above, the Magistrate Judge recommends that the Court issue an Order: (1) approving and adopting this Report and Recommendation; and (2) directing that Judgment be entered dismissing plaintiffs claim under 42 U.S.C. § 1983 with prejudice, and dismissing plaintiffs state law claims without prejudice to refiling in state court.

DATED: December 5, 1997

STEPHEN J. HILLMAN /s/
UNITED STATES MAGISTRATE JUDGE

If the Court dismisses plaintiffs only federal claim, it should exercise its discretion, under 28 U.S.C. § 1367(c)(3), to also dismiss, without prejudice, plaintiff's supplemental state law claims.[6]

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6 Of course, the Court does not reach any statute of limitations issues as to the state law claims.

United States District Court
CENTRAL DISTRICT OF CALIFORNIA
Dallas R. Williams, Plaintiff, CASE NO.CV94-2487 ABC
vs.
County of Ventura, et al Defendants.
NOTICE OF FILING OF MAGISTRATE JUDGE'S REPORT & RECOMMENDATION ET AL.
TO: All Parties of Record
Dallas R. Williams 520 Mesa Dr., Ojai, CA 93023; John V. O'Meara 21700 Oxnard St., Suite 1750, Woodlands, Hills, CA 91367-7307; Robert Friedenberg 550 West "C" St., Suite 1410, San Diego, CA 92101
You are hereby notified that pursuant to the Local Rules Governing Duties of Magistrate Judges, the Magistrate Judge's report and recommendation has been filed and a proposed judgment and/or order has been lodged on March 17,1997, copies of which are attached. Any party having objections to the report and recmmendation and the proposed judgment and/or order shall, not later than March 31, 1997 file and serve a written statement of objections with points and authorities in support thereof before the Honorable STEPHEN J. HILLMAN, U.S. Magistrate Judge. Failure to do so within the time limit specified shall be deemed a consent to any proposed findings of fact. Upon receipt of objectons, or upon the lapse of the time for filing objections, the case will be submitted to the District Judge for disposition. Following entry of judgment and/or order, all motions or other matters in the case will be considered and determined by the District Court Judge. The Report and Recommendation of a Magisrate Judge is not a final appealable order. A Notice of Appeal pursant to Federal Rules of Appellate Procedure *4* (a) (1) should not be filed until entry of a judgment and/or order by the District Judge. Dated: March 17, 1997 - SHERRI CARTER CLERK - United States District Court - By SANDRA L. BUTLER /s/ - Deputy Clerk - Attachments - M-51 (04/96)

United States District Court
CENTRAL DISTRICT OF CALIFORNIA

REQUEST FOR ENTRY OF CIVIL DEFAULT & DEFAULT JUDGMENT

Reference documents submitted on 5/9/97 for case number CV 97-2487ABC(SH) - The attached document(s) submitted to The clerk's office for filing does not comply with the Federal Rules of Civil Procedure and is deficient for the reason(s) checked below. The document(s) is being returned to you for correction. Please reurn this form with the corrected document(s) when returned to the clerk's office for filing.

REQUEST FOR DEFAULTS AND DEFAULT JUDGMENTS:

*** (See Back) Back:
"On your proof of service of summons & complaint. It stated that S.D. Lowry Construction was served by personal service. We need A person authorized to accept service of process or substituted service. We need the name and what capacity they are to S. D. Lowry Construction."

PLEASE ATTACH THIS PLEADING DEFICIENCY FORM TO YOUR DOCUMENT WHEN THE CORRECTIONS ARE SUBMITTED.

Date: 5/12/97

By: Phyllis O. Jordan - Deputy Clerk /s/

United States District Court
CENTRAL DISTRICT OF CALIFORNIA

TO: U.S. DISTRICT JUDGE / U.S. MAGISTRATE
JUDGE Stephen J. Hillman

FROM: Sandra Butler - Deputy Clerk

CASE NO.: CV97-2487ABC(SH)
CASE TITLE: Williams v. County of Ventura

DOCUMENT ENTITLED: Motion to Compel
RECEIVED DATE: 12-24-97

Upon the submission of the attached document(s), it was Noted that the following discrepancies exist:

[x] OTHER: "No compliance with Local Rule 7.15"

The document is NOT to be filed, but instead REJECTED and Is ORDERED returned to *counsel. *Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the Court.

Dated: 1-5-98 - STEPHEN J. HILLMAN /s/
U.S. DISTRICT JUDGE/U.S.
MAGISTRATE JUDGE

*The term "counsel" as used herein also includes any pro se party. See Local Rule 2.9.3

United States District Court
CENTRAL DISTRICT OF CALIFORNIA

REQUEST FOR ENTRY OF CIVIL DEFAULT & DEFAULT JUDGMENT

Reference documents resubmitted on 5/15/97 for case number CV 97-2487-ABC(SH) - The attached document(s) submitted to the clerk's office for filing does not comply with the Federal Rules of Civil Procedure and is deficient for the reason(s) checked below. The document(s) is being returned to you for correction. Please reurn this form with the corrected document(s) when returned to the clerk's office for filing.

REQUEST FOR DEFAULTS AND DEFAULT JUDGMENTS:

** A responsive pleading was filed by dfts (motion to dism) filed on 5/6/97***

PLEASE ATTACH THIS PLEADING DEFICIENCY FORM TO YOU DOCUMENT WHEN THE CORRECTIONS ARE SUBMITTED.

Date: 5/16/97

By: Phyllis O. Jordan - Deputy Clerk /s/

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Dallas R. Williams, Plaintiff, CASE NO.CV94-2487 ABC
vs.
County of Ventura, et al Defendants.

NOTICE OF FILING OF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION & LODGING OF PROPOSED JUDGMENT AND/OR ORDER ET AL.

TO: All Parties of Record

Dallas R. Williams 520 Mesa Drive Ojai, CA 93023; John V. O'Meara 21700 Oxnard Street Suite 1750 Woodland, Hills, CA 91367-7307; Robert Friedenberg 550 West "C' St., Suite 1410 San Diego, CA 92101

You are hereby notified that pursuant to the Local Rules Governing Duties of Magistrate Judges, the Magistrate Judge's report And recommendation has been filed and a proposed judgment and/or order has been lodged on December 05,1997, copies of which are attached. Any party having objections to the report and recmmendation and the proposed judgment and/or order shall, not later than December 26,1997 file and serve a written statement of objections with points and authorities in support thereof before the Honorable STEPHEN J. HILLMAN, U.S. Magistrate Judge. Failure to do so within the time limit specified shall be deemed a consent to any proposed findings of fact. Upon receipt of objections, or upon the lapse of the time for filing objections, the case will be submitted to the District Judge for disposition. Following entry of judgment and/or order, all motions or other matters in the case will be considered and determined by the District Court Judge. The Report and Recommendation of a Magisrate Judge is not a final appealable order. A Notice of Appeal pursant to Federal Rules of Appellate Procedure 4 (a) (1) should not be filed until entry of a judgment and/or order by the District Judge.

Dated: December 05,1997- SHERRI CARTER CLERK - United States District Court - By SANDRA L. BUTLER /s/ - Deputy Clerk - Attachments - M-51 (04/96)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES DISRICT COURT
CENTRAL CALIFORNIA

FILED JUL 21 1997 - CLERK

Civil Action

DALLAS R. WILLIAMS, Plaintiff,
v.
COUNTY OF VENTURA, et al., Defendants.

No. CV 97-2487-ABC (SH)

MEMORANDUM AND ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

For reasons discussed herein, plaintiff's Complaint is dismissed with leave to amend.

I. PROCEEDINGS.

On April 11, 1997, pro se plaintiff Dallas R. Williams filed this Complaint, naming as defendants the County of Ventura and two groups of county employees (collectively "County defendants"), and a private contractor, S.D. Lowry, as an individual, under the business name S.D. Lowry Construction, and, apparently, under the name "Hank Williams" (collectively "Lowry defendants"). On May 6, 1997, defendants filed three motions to dismiss the Complaint under Rule 12 of the Federal Rules of Civil Procedure. The Lowry defendants moved to dismiss for lack of subject matter jurisdiction, under Fed. R Civ. P. 12(b)(1). Both Lowry and County defendants moved, separately, to dismiss for failure to state a claim upon which

relief can be granted, under Fed. R. Civ. P. 12(b)(6).
Plaintiff filed a single Opposition ("Opp.") on May 19, 1997. Lowry defendants filed a Reply on May 28, 1997. County defendants did not reply. This court took the motions under submission, without oral argument, on May 30, 1997. (See Minute Order, that date.).

II. PLAINTIFF'S ALLEGATIONS.

Plaintiff alleges that the Lowry defendants constructed additions to two houses he owned, in violation of the County's Building Code, and conspired with the first group of County defendants to gain approval of the plans and the construction, thereby causing him damages. (Complaint ¶¶ 11, 16-17, 20, 22-26.) Plaintiff states, as a first cause of action, that these defendants violated his rights under the Fourteenth Amendment by conspiring to deprive him of property without due process of law and to deny him equal protection of the laws. (Complaint ¶¶ 9-10.)
Plaintiff also alleges that the second group of County defendants conspired to overcharge him for a copy of a court reporter's transcript, and, thereby, to obstruct justice. [Complaint ¶¶ 28-31.] Plaintiff states, as a second cause of action, that these defendants also violated his Fourteenth Amendment rights by depriving him of property without due process of law and deny-ing him equal protection of the laws. [Complaint ¶¶ 31-32.]
Plaintiff may also be attempting to assert state tort claims of negligence and fraud, but this is not clear from the Complaint.

III. GROUNDS FOR DISMISSAL.

A. THE COMPLAINT FAILS TO ALLEGE JURISDICTION.

A complaint must contain "a short and plain statement of the grounds on which the court's jurisdiction depends." Fed. R. Civ. P. 8(a)(1). Local Civil Rules of the U.S. District Court, Central District of California, require that plaintiff plainly state, in the first

paragraph of his Complaint, "[t]he statutory or other basis for the exercise of jurisdiction by this Court." Local Rule 3.7.1. A claim may be dismissed for lack of subject matter jurisdiction under Fed.R.Civ.P. 12(b)(1). A challenge to the court's subject matter jurisdiction can be raised at any time, including sua sponte by the court itself. Fed. R. Civ. P. 12(h)(3); May Co. Dep't Store v. Graphic Process Co., 637 F.2d 1211, 1216 (9th Cir. 1980).

Plaintiff does not state, anywhere in his Complaint, the specific statutory or other basis for invoking the subject matter jurisdiction of a federal court. It is clear from the Complaint that diversity jurisdiction, under 28 U.S.C. § 1332, does not apply. It is also apparent that plaintiff is attempting to assert the court's federal question jurisdiction, under 28 U.S.C. §§ 1331 and 1343, over federal civil rights claims. Plaintiff may also be daiming supplemental jurisdiction, under 28 U.S.C. § 1367, over state law claims, but, as noted above, this is not clear from the Complaint.

Plaintiffs failure to allege the basis for the court's subject matter jurisdiction over his claims is sufficient reason to dismiss the Complaint with leave to amend. However, if plaintiff can amend his Complaint to overcome the substantive defects discussed below, he should also be able to allege subject matter jurisdict-ion. On the other hand, if plaintiff cannot amend so as to over-come the defects discussed below and state a cognizable federal civil rights claim, then the court must dismiss any state law claims he may assert, without prejudice to their refiling in state court.

B. THE COMPLAINT LACKS A PLAIN STATEMENT OF THE CLAIMS.

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). 'The plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support the plaintiffs claim."

Jones v. Community Redeve-lopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). "Each averment of a pleading shall be simple, concise, and direct." Fed.R.Civ.P. 8(e)(1). Rule 8 is designed to provide defendants with fair notice of the claims against them and the grounds on which those claims rest. See McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991); McHenry v. Renne, 84 F.3d 1172, 1177 et seq. (9th Cir. 1996)(complaint properly dismissed under Rule 41 for failure to comply with Rule 8 and court order).

Plaintiff seems to understand that Rule 8 requires him to state "what happened, when it happened, and who caused the alleged constitutional deprivation." (Opp. at 2.) However, plaintiff has failed to do so. The Complaint states irrelevant facts, such as that plaintiff disagrees politically with his County Supervisor (Complaint ¶ 8), but fails to state, clearly and simply, what each defendant allegedly did, when, how plaintiff was injured, and how this violated his constitutional rights. For example, under his first cause of action, plaintiff refers to the improper approval of construction plans, but does not say when this happened, how the County defendants, other than "Doe 1" *(see* Complaint ¶ 11), were specifically involved, and exactly how this injured him. Plaintiff does not allege how the construction in question violated the Building Code, or how the violation came to light. Plaintiff does not make clear whether defendant "Hank Williams," the name signed as the architect on the construction plans, is a real person but not an architect, or a forgery by another defendant. Plaintiff does not say whether his injury was the faulty construction in itself, or whether construction not to Code resulted in indirect injuries, such as inability to sell a house not in compliance with the Code. Under his second cause of action, plaintiff states that he was over-charged for transcripts, but does not state what he was charged. He does not show what connection, if any, the acts alleged in his second cause of action had with those alleged in his first cause of action.

In brief, this Complaint is so lacking in clarity and specificity that it fails to give the defendants notice of exactly what they are alleged to have done. It also fails to give the court any basis for determining whether or not plaintiff can overcome the other defects discussed below, and state a cognizable federal claim, or whether, in fact, plaintiffs allegations simply raise state law tort claims.

C. THE COMPLAINT FAILS TO STATE A COGNIZABLE FEDERAL CLAIM.

A motion to dismiss under Fed.R.Civ.P. 12(b)(6) tests the legal sufficiency of a statement of claim for relief. A complaint may be dismissed for failure to state a claim based on either the lack of a cognizable legal theory or insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)(2d amended opinion). A complaint may also be dismissed for failure to state a claim if it discloses some fact that will necessarily defeat the claim. Franklin v. Murphy, *745* F.2d 1221, 1228-29 (9th Cir. 1984).

To determine whether a complaint states a claim on which relief may be granted, allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1990)(amended opinion). A complaint should be dismissed if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Neitzke v. Williams, 490 U.S. 319,327, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989); Hishon v. King & Spalding, 467 U.S. 69, 73, 104 5. Ct. 2229, 81 L. Ed. 2d 59 (1984).

Plaintiff claims that defendants violated his rights, under the Fourteenth Amendment, not to be deprived of property without due process of law, and not to be denied equal protection of the laws. Defendants may be liable for such claims under 42 U.S.C. § 1983. To state a claim under § 1983, plaintiff must allege:

(1) that defendants acted under color of state law; and (2) that defendants' conduct deprived him of rights secured by the Constitution or laws of the United States.
Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908,68 L. Ed. 2d 420 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327, 330-3 1, 106 5. Ct. 662, 88 L. Ed. 2d 662 (1986); Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988); Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985)(en banc), cert. denied, 478 U.S. 1020 (1986). Plaintiff's Complaint fails to state a cognizable federal civil rights claim, under 42 U.S.C. § 1983, for the following reasons.

1. **The Complaint does not show that the Lowry Defendants acted under color of state law.**

To be liable under § 1983, defendants must have acted under color of state law. Generally, private parties are not acting under color of state law. See Price v. Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991), cert. denied, *503* U.S. 938 (1992). Plaintiff states that Lowry owned a private construction business, and has not alleged that the Lowry defendants were acting as government officials or under any government contract. The only basis alleged for the claim that the Lowry defendants acted under color of law is the allegation that they conspired with the County defendants. A private individual may be liable under § 1983 if the individual conspired with government officials to deny someone's constitutional rights. See Dennis v. Sparks, 449 U.S. 24, 27-29, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980); Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir. 1996); United Steel Workers v. Phelps Dodge Corp., *865* F.2d *1539, 1540* (9th Cir. 1989)(en banc), cert. denied, 493 U.S. 809 (1989). However, to prove such a conspiracy existed, plaintiff must allege an agreement or meeting of minds among the defendants to violate constitutional rights. Taylor v. List, 880 F.2d 1040, 1048 (9th Cir. 1989); Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989);

United Steel Workers, 865 F.2d at 1540-41. Plaintiff must allege specific facts showing such an agreement or meeting of the minds. See Woodrum, 866 F.2d at 1126. Conclusory allegations of a conspiracy are insufficient to support a claim under § 1983. See Price, 939 F.2d at 708-09; Woodrum, 866 F.2d at 1126; Schucker v. Rockwood, 846 F.2d 1202, 1205 (9th Cir.), cert. denied, 488 U.S. 995 (1988).

Plaintiff simply makes conclusory allegations that defendants conspired. He does not allege any specific facts to support that conclusion.1 Therefore, he does not show that the Lowry defendants acted under color of law, and does not state a § 1983 claim against them.

2. **The Complaint does not show that plaintiff was denied a Constitutional right.**

The preliminary inquiry in considering a claim under § 1983 is whether the plaintiff was deprived of a right secured by the Constitution, and was not merely the victim of a tort. See Baker v. McCollan, 443 U.S. 137, 146-48, 99 5. Ct. 2689, 61 L. Ed. 2d 433 (1979).2

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1 The closest plaintiff comes to alleging specific facts to show a meeting of the minds is to state that Lowry "has made personal friends" with the first group of County defendants, and that Superintendent Lacey refers to the same County defendants as "county family." (Complaint ¶ 7; Opp. at 3.) However, the fact the people are friends, or that a politician uses a cliche, does not establish the existence of a conspiracy.

2 "Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be brought in state 28 court under traditional tort-law principles.... [¶] Having been deprived of no rights secured under the United States Constitution, respondent had no claim cognizable under § 1983." Id.

Plaintiff claims that defendants' actions were not merely torts, but violations of his Fourteenth Amendment rights to equal protection of the laws and due process of law. However, his factual allegations do not support the claim that he was denied any specific Constitutional rights.

a. **Equal Protection**.

Essentially, the Equal Protection Clause mandates that persons similarly situated should be treated alike. City of Clebume v. Clebume Living Center, 473 U.S. 432, 439, 105 5. Ct. 3249, 87 L. Ed. 2d 313 (1985); Philips v. Perry, 106 F.3d 1420, 1424-25 (9th Cir.

1997). A facially neutral law that is so administered as to unjustly discriminate between persons similarly situated may deny equal protection. Guillory v. County of Orange, 731 F.2d 1379, 1383 (9th Cir. 1984), citing YickWo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886). It appears that plaintiff is not challenging state or county laws themselves, but claiming that defendants failed to apply them in his case. However, "[a] denial of equal protection entails, at a minimum, a dassification that treats individuals unequally" (emphasis added). Coalition for Economic Equity v. Wilson, 110 F.3d 1431, 1445 (9th Cir. 1997). "[T]he Equal Protection Clause prohibits disparate treatment by a state 'between classes of individuals whose situations are arguably indistinguishable."' United States v. Devlin, 13 F.3d 1361, 1363 (9th Cir. 1994), quoting Ross v. Moffitt, 417 U.S. 600, 609, 94 5. Ct. 2437, 41 L. Ed. 2d 341 (1974).

"To accomplish this, a plaintiff can show that the law is applied in a discriminatory manner or imposes different burdens on diff-erent classes of people." Freeman v. City of Santa Ana, 68 F.3d 1180, 1187 (9th Cir. 1995). The first step in equal protection analysis is to identify the defendant's classification of groups.

Id. Once the plaintiff establishes such a classification, "it is necessary to identify a 'similarly situated' class against which

the plaintiffs class can be compared," in order to show that persons in similar circumstances were treated unequally because of being "classified" as belonging to different groups. Freeman, 68 F.3d at 1187 (citations omitted). Finding such a classification is, thus, a necessary first step to finding an equal protection violation. See, Mlikotin v. City of Los Angeles, 643 F.2d 652, 653-54 (9th Cir. 198 1)(affirming dismissal of complaint when plaintiffs failed to articulate action based on invidious distinction or facially unreasonable classification).[3] Plaintiff has not alleged any "classification" by defendants, or that he was treated differently from others similarly situated, because of such a classification or because defendants perceived him as a member of a particular group. Therefore, he has not alleged the basic elements of an equal protection claim. Furthermore, the Complaint does not make clear that plaintiff is, in fact, alleging that he was denied equal protection through defendants' discrimination against him as a member of a group. Plaintiff seems to be saying that he was denied equal protection of the laws simply because, in specific instances, defendants violated, or failed to enforce, state or county laws they were obliged to follow. However:

"not every denial of a right conferred by state law involves a denial of the equal protection of the laws, even though the denial of the right to one person may operate to confer it on another.... [E]rroneous or mistaken performance of [a] statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws.

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3 Cf. United States v. Lopez-Flores, 63 F.3d 1468, 1472 (9th Cir. 1995), cert. denied, 116 S. 27 Ct. 794 (1996), citing Jones v. Helms, 452 U.S. 412, 423-24, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981), etc. (analysis of equal protection claim involves two steps; claims must first show that a statute, or the manner of enforcing it, "results in members of a certain group being treated differently from other persons based on membership in that group").

[¶] The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination." Snowden v. Hughes, 321 U.S. 1, 8, 64 S. Ct. 397, 88 L. Ed. 497 (1944), cited in Nordlinger v. Hahn, 505 U.S. 1,26-27, 112 S. Ct. 2326, 120 L. Ed. 2d 1(1992) (Thomas, J., concurring).

b. Due Process.

The Due Process Clause of the Fourteenth Amendment encompasses three types of protection: (1) it incorporates specific protections defined in the Bill of Rights and extends them to cover the states; (2) it includes "substantive due process" barring "certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them"; and (3) it includes procedural due process, guaranteeing fair procedures. Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. *975,* 108 L. Ed. 2d 100 (1990). To state a claim under § 1983 for denial of due process under the Fourteenth Amendment, plaintiff must articulate a claim under one of these alternatives. Plaintiff claims that defendants deprived him of property without due process when they (1) improperly approved building plans (causing unspecified damages), and (2)
overcharged him for transcripts. This claim does not involve any independent Constitutional right incorporated in the Due Process Clause. Nor does it involve the sort of extreme, arbitrary deprivation that could be a denial of substantive due process. If so, a substantive due process claim could be stated any time a plaintiff lost money because an official erroneously granted an application or overcharged for a service.
Plaintiff may be able to state a claim that defendants' actions denied him procedural due process, i.e., that he was denied fair procedures when defendants deprived him of his property.

However, in a procedural due process claim, the deprivation of a property interest "is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." Zinermon, 494 U.S. at 125 (emphasis in original; citations omitted). "The constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." Id. at 126. To determine whether a constitutional violation occurred, the court must examine whether the State provided any constitutionally adequate remedial process, including "any remedies for erroneous deprivations provided by [state] statute or tort law." Id.
If the state action complained of was random and unauthorized, due process is satisfied if the state provides a meaningful post-deprivation remedy for the loss. See Zinermon, 494 U.S. at 128-130; Hudson v. Palmer, 468 U.S. 517, 533, 536, 104 S. Ct. 10 3194,82 L. Ed. 2d393 (1984); Parratt, 451 U.S. at 541 (overruled on other grounds). One such constitutionally adequate post-deprivation remedy is provided under the California Tort Claims Act, Cal. Govt Code §§ 810 et seq. Barnett v. Centoni, 31 F.3d 813, 816-17
(9th Cir. 1994) (per curiam) (dismissal of § 1983 property deprivation claim proper because Tort Claims Act provides adequate remedy). Under Zinermon, there are three preconditions for applying the Parratt/Hudson doctrine: the action must have been unpredictable (i.e. random), pre-deprivation procedures would have been impotent to prevent the particular conduct, and the conduct must have been unauthorized, i.e. not within the official's express or implied authority. See Caine v. Hardy, 943 F.2d 1406, 1413 (5th Cir. 1991), cert. denied, 503 U.S. 936 (1992), citing Zinermon. An action is "random" if it is not foreseeable to the state (not to the offending official). Zinermon, 494 U.S. at 130. An official is not "authorized" to misuse or ignore regulations. Caine, 943 at 1414.

This case falls under the Zinermon preconditions. The complained of acts were random, because the state could not have predicted that these particular officials would commit the alleged violations. The complained of acts were unauthorized, because defendants allegedly misused or ignored regulations, violating the very laws they were supposed to be applying, by improperly approving building plans and overcharging for transcripts. It would have been impossible for the state to provide a meaningful pre10 deprivation process to prevent such violations. Therefore, the Parratt/Hudson doctrine would apply to plaintiffs claims, and there would be no due process violation unless the state denied him an adequate post-deprivation remedy.

Plaintiff has not alleged that the remedies provided by the Tort Claims Act and California tort law are inadequate, nor has he alleged that he filed an administrative complaint or pursued an action in state court to seek a remedy for his loss. Thus, even if plaintiffs allegations are true, and defendants did the wrongful acts alleged, he has not stated a procedural due process claim.

D. **THE COMPLAINT ALSO CONTAINS ADDITIONAL DEFECTS**

The Complaint also suffers from at least three additional defects, which are independent grounds for dismissal, at least in part, for failure to state a claim. (i) Plaintiff names the County of Ventura as a defendant, but does not allege any policy or custom under which the County, as a municipal entity, would be liable under Monell v. Dep't of Soc. Services, 436 U.S. 658, 98 S. Ct. 2018,56 L. Ed. 2d 611 (1978). (ii) Plaintiff names a number of supervisory personnel as defendants, but does not allege facts showing personal involvement in constitutional deprivations, or a causal connection between the supervisor's conduct and a constitutional violation. See Redman v. County of San Diego, 942 F 2d 1435, 1446-47 (9th Cir. 1991) (en banc), cert. denied, 502 U.S. 1074 (1992). (iii) Plaintiff has raised claims involving the

the subjective intent of the defendants, and has named official defendants who are entitled to assert a qualified immunity defense to such claims, but hast failed to meet the "heightened pleading standard which requires nonconclusory allegations setting forth specific evidence of unlawful intent."
Housley v. United States, 35 F.3d 400, 401 (9th Cir. 1994); see also Branch v. Tunnell (Branch II), 14 F.3d 449, 452 (9th Cir.), cert. denied, 512 U.S. 1219 (1994); Branch v. Tunnell (Branch I), 937 F.2d 1382, 1386 (9thCir. 1991).

IV. LEAVE TO AMEND.

In pro se civil rights cases, pleadings should be construed liberally and so as to afford the plaintiff the benefit of any doubt as to the potential viability of the claims asserted. Karim-Panahi, 839 F.2d at 621. Pro se litigants must be given leave to amend unless it is clear that the deficiencies cannot be cured by amendment. Id. However, if careful consideration of the plaintiffs allegations and theories discloses that no cognizable claim can be stated, the court may properly conclude that amendment would be futile and may dismiss a complaint with prejudice. Cato v. United States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).
It is unclear from the Complaint whether plaintiff is attempting to state claims under 42 U.S.C. § 1983, under state tort law, or under both. Because the Complaint lacks factual allegations essential to either federal or state claims, the Court deadines to "supply essential elements of [plaintiffs claims] that were not initially pled. Ivey v. Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). The pro plaintiff should be afforded an opportunity to show that he can state a claim under § 1983 (and, perhaps, supplemental state law claims as well), if such is his intention. However, he must do so dearly and explicitly, and must overcome the defects discussed above.

V. ORDER

Accordingly, it is hereby ORDERED that:
(1) Defendants' three motions to dismiss are GRANTED.
(2) Plaintiffs Complaint is DISMISSED with leave to amend..
(3) Plaintiff is GRANTED twenty-three (23) days from the date of this Order within which to address the defects discussed above by filing an amended complaint. If plaintiff chooses to file an amended complaint, it should be labeled "First Amended
Complaint," and should bear the case number "CV 97-2487-ABC (SH)." A First Amended Complaint will supersede the original Complaint, and should be complete in itself without reference to prior pleadings. Local Rule 3.8.
(4) Alternatively, plaintiff may voluntarily dismiss this action, pursuant to Fed.Civ.P.41(a), without prejudice to pursuing whatever remedies he may have in state court. If plaintiff fails to either file a First Amended Complaint in accordance with this order, or voluntarily dismiss this action, the Magistrate Judge will recommend that this action be dismissed, under Fed.R.Civ.P. 41(b), for failure to comply with the court's order and for failure to prosecute.
DATED: July 21, 1997

STEPHEN . HILLMAN /s/
UNITED STATES MAGISTRATE JUDGE

County of Ventura, California
Hall of Administration
800 South Victoria Avenue
Ventura, CA 93009-1270
DAN GOODWIN, MAI
ASSESSOR OF VENTURA COUNTY

Daryl R. Brown Chief Deputy Assessor Services
Bruce W. Gray Chief Deputy Assessor Valuation
Ventura, CA 93009-1270

April 7, 1999

Mr. Dallas R. Williams 520 Mesa Drive Ojai, CA 93023

Dear Mr. Williams,
SUBJECT: YOUR REQUEST FOR INFORMATION
This is in response to your request to review public information on Assessors Parcel Numbers 017-0-180-600, 017-0-180-290, 017-0-180-550 and 017-0-180-560. You also referenced street addresses 445, 461, 465, 481, and 485 Mesa Drive.
Parcels -290 and -550 do not exist on the current assessment roll. Parcel -290 was the parent parcel to -550 and -560. Parcel -550 was the parent parcel to parcel -600 and -610.
As a result, we can only respond to the request for information as it applies to parcels -560, assessed to Ronald and Barbara Smith; -600, assessed to Jerry and Glenda Taft; and -610, assessed to Robert and June Sears.
Our public information for parcel -560, identified as 445 Mesa Drive, is computerized. It indicates that the parcel is improved with a single family residence. A printout is enclosed.
The public information for parcel -600 is not yet computerized. It resides on a paper record that contains information that by law is to be held confidential by the Assessor. As a result, it is not open to public inspection. I have extracted the following information:

It is improved with four single family residences, 461, 465, 481, and 485 Mesa Drive. In addition, there are two shop buildings located on this parcel. A printout showing the values assigned to the parcel is enclosed.

Mr. Dallas R. Williams Page two April 7,1999

Our records indicate that parcel -610 is not improved with a residence. It contains fruit trees on some of the acreage, together with pipelines and wind machines. A printout is enclosed which shows the assessment.
I apologize for the delay in responding to your inquiry. The need to process requests received before yours, and a subsequent misunderstanding of the response you required contributed to it. I hope that this information is satisfactory. Unfortunately, while the law provides for the release of public information, it is not free. Please send us a check in the amount of $10.00, made out to Ventura County Assessor, to cover the cost of providing the information.
You may contact me at 654-2163 if you have any questions.
Very truly yours, DARYL R. BROWN Chief Deputy Assessor
Enclosures cc: Dan Goodwin Valuation Division Files

***

July 8, 1987
Philip J. Sherman P.E., PROFESSIONAL ENGINEERING ASSOCIATES CIVIL ENGINEERING SURVEYING LAND DEVELOPMENT
Dallas Ray Williams 520 Mesa Drive Meiners, Oaks Ojai, California
STATEMENT FOR: Construction, staking, Fencing & Room addition; includes: Blueprints, County records, Research
$380.OO (paid in full)
1748 Gonzales Rd., Oxnard, CA 93030 (805) 649-9718

THOMAS D. SCHMIDT ATTORNEY AT LAW 567 WEST CHANNEL ISLANDS BOULEVARD NUMBER 327
(805) 984-3930 PORT HUENEME, CALIFORNIA 93041
FAX (805) 984-3941
ATTORNEY/CLIENT PRIVILEGE - ATTORNEY WORK PRODUCT
August 7, 1997

Mr. Dallas R. Williams 520 Mesa Drive Ojai, California 93023
Re: Legal Representation - Williams v. County of Ventura, et al.
Dear Mr. Williams:

The purpose of this letter is to memorialize our meetings which occurred on August 5, and August 7, 1997. During the meetings we discussed your civil law suit involving a contractor, the County of Ventura and their employees.
I agreed to prepare an Amended Complaint - CV 97-2487 - in your name as representing yourself In *Pro Per* and to prepare Summons for the case. Further I agreed to conduct research to ascertain if there was a viable cause of action for a Civil Rights violation. I told you that I could not guarantee or warranty that the Complaint would withstand later Motions to Dismiss.
Your gave me the authority to prepare the Amended Complaint in a manner that would be acceptable to the Court.
In return for my research and preparation you have paid me *$750.*
In reviewing the material that you provided and in conducting my research, I have determined that the causes of action against Supervisor Lacey, Sharon Lewis, and the persons in the Court Clerk's office would not be viable and that the judge may consider them frivolous. Even though I agreed to prepare the Amended Complaint in your name, as an attorney licensed

in the state and federal courts I can't prepare any court papers that I consider frivolous

ATTORNEY/CLIENT PRIVILEGE ATTORNEY WORK PRODUCT

Further, I believe that the causes of action for due process and equal protection are not viable. This opinion is based upon the Order of Magistrate Hiflman and the cases that were cited.

I do believe that there is a 5th and 14th Amendment violation for Taking Property Without Compensation. In preparing the Complaint, I have placed my efforts in keeping your case in federal court based upon that theory. There is some, but not extensive, legal support for the theory.

Further, I believe that there you may be facing statute of liminatations problems.

Please review the Amended Complaint and advise me of any desired changes. I am returning to you the materials that you provided. Additionally, I am sending you some research information.

In response to your list of questions that you gave to me, I respond as follows:

1. You need to present the summons to the District Court Clerk with your First Amended Complaint. The clerk will stamp them and you can then serve the complaint on the parties listed. The complaint does not have to be served immediately, but should be served within the next 30 days.

2. You can call the attorneys that filed Motions to Dismiss and ask them if they will accept service. If they refuse, you can serve by mail. See FRCP Forms 1A and lB. They are annexed to the rules.

3. Points and Authorities are not required to draft a complaint, however, I have enclosed the cases used in the 5th Amendment drafting.

4. Steps: a. File Complaint; b. Serve Complaint within deadline set by FRCP c. Review the Central District local rules.

I wish you luck in your lawsuit. Call me if I can assist you further. Sincerely, Thomas D. Schmidt

ACKNOWLEDGMENT

I have read this letter and acknowledge that I have been informed of the matters discussed in it. I agree that with the limitations of representation discussed in the letter.

DATED: August 7 1997
Dallas Williams /s/ ATTORNEY/CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT

***

RESOURCE MANAGEMENT AGENCY Planning Division
Keith A. Turner **County of Ventura**
Director
NOTICE OF ALLEGED VIOLATION
March 6, 1992

Dallas R. Williams 520 Mesa Drive Ojai, CA 93023
Certified Mail No.P861360443 - Case No. 91-086
SUBJECT: ALLEGED VIOLATION AT 520 Mesa Drive, Ojai ASSESSOR'S PARCEL NO. 017-0-132-010

Dear Mr. Williams:

The Planning Division recently received a report which indicates that a violation of the Ventura County Zoning Ordinance may be occurring at the subject property. In general terms this alleged violation involves: the installation of a wooden fence in excess of three (3) feet high in the 40-foot sight safety triangle and the front yard setback.
The County is aware that violations of the County's regulations.

often occur because people are unaware of the requirements Because of this likelihood, our aim is simply to see that the violations are corrected promptly. It is not our intent to punish people for unwittingly violating a regulation with which they are unfamiliar. We want to work with you to resolve a violation should one exist.

Should the above described violation exist, it should be abated within thirty (30) days. The violation will be considered abated when the following has occurred: the fence is either lowered to three (3) feet or less, moved back onto the property so as not to block the 40-foot sight safety triangle, or removed altogether.

To help us resolve the present situation, I ask that you contact me at (805) 654— 2462, within ten (10) days of the date of this letter so that we can discuss the matter and how the prospective violation can be voluntarily abated. This voluntary approach is the one we prefer using in all cases.

If the alleged violation continues beyond the thirty (30) day period, a formal inspection of the property will occur to confirm the existence of the violation. If the violation is confirmed, a Notice of Violation will be sent. If the violation is not abated within the prescribed time period, any or all of the actions listed below may be initiated:

Notations will be made in the Planning Division's records that a violation exists and that no permits can be issued until the violation is corrected.

A Notice of Noncompliance will be recorded against the deed which "clouds" the title of the property and usually complicates the sale of the property or securing loans or financing.

1C49-7.92

800 South Victoria Avenue, L #1740, Ventura, CA 93009
(805) 654-2481 FAX (805) 654-2509

Filing criminal charges against you, which if you are convicted, could result in fines, probation and possible jail time. In addition to our fee., Ventura County Municipal Court fees are 150% of total fines charged.

It should also be noted that once the existence of one or more violations have been verified by this Agency, inspections to confirm the abatement of the violation and other similar costs incurred by the County to secure compliance may be charged against you. The current rate of billing is $68.00 per hour.

I urge you to call me promptly, but not later than ten (10) days after the date of this letter. Please reference the "Case No." identified at the top of this letter.

Sincerely yours,

Clyde Henderson Zoning Enforcement Officer CH:j j

Attachments: Section 8106-8.1.1 (Fences, Walls and Hedges) Section 8106—8.4 (sight Triangle) cc: Complainant

Please advise if alleged violations are not abated within 30 days. File

***

RECORDED AT REQUEST OF AND RETURN TO:
County of Ventura Tom Melugin /s/
Division of Building & Safety 800 S. Victoria Ave.,
Ventura, CA 93009 "NO FEE REQUIRED"
95-002263 **Recorded** Official Records
County of Ventura Richard D. Dean Recorder
4:55pm 9-Jan-95
DIVISION OF BUILDING & SAFETY
W.E. Windroth Building Official

N0TICE OF NONCOMPLIANCE

RE: The property located at 181 N. Encinal Ojai, CA
Assessor's Parcel Number: 017-0-143-190
Property owners and address: Stephen D. & Laurie N. Lowry 181 N. Encinal Ojal. CA 93023
Property owner as recorded In Document Number 86-0136514 off icial Records of the County of Ventura as of October 2, 1986.
The folowing violation(s) of the Ventura County Building Code have been identified In connection with the above parcel and/or structures thereon:
Section 3-4: Fallure to have work Inspected to assure compliance with requirements of the VCBC.
Other: Permit cancelled due to lack of required Inspections. The property owner was notified on November 30, 1994 pursuant to the provisions of Section 2-2(h) of the Ventura County Building Cods, this NOTICE OF NONCOMLIANCE has been caused to be recorded in the Office of the County Recorder.
The Building Official may declare this Notice null and void by filing a Release of Notice of Noncompliance. (There is a fee for recordation of Release of Notice of Noncompliance.) The filing of such release shall be contingent upon the issuance of any necessary permits payment of required fees If any, correction or removal of violations, inspections to verify compliance with applicable requirement. COUNTY OF VENTURA
Date: 1-9-95 Tom Melugin /s/ District Supervisor

***

SOLTMAN & O'MEARA 21700 Oxnard Street, Suite 1750 Woodland Hills, CA 91367-7307 (818) 593-2200
JOHN V. O'MEARA - State Bar No. 144416 Attorneys for Defendant STEPHEN D. LOWRY dba S.D. LOWRY CONSTRUCTION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALLAS R. WILLIAMS, an individual, Plaintiff,
v.
COUNTY OF VENTURA; S.D. LOWRY CONSTRUCTION; S.D. LOWRY; HANK WILLIAMS; SUSAN LACEY; ROBI KLEIN; JACALYN COHEN; TOM BERG; W.E. WINDROTH; TOM MELUGIN; STEPHEN BALL; SHARON LEWIS; BETTY KANE; LINDA FINN; FLORENCE PURSHAN; SHEILA GONZALEZ; and DOES 1 through 10, inclusive, Defendants. CASE NO. CV 97-2487 ABC(SH)
REQUEST FOR PRODUCTION DOCUMENTS, SET NO. ONE
[F.R.C.P. 34J Propounding Party: Defendant, STEPHEN D. LOWRY
Responding Party: Defendant, COUNTY OF VENTURA
DATE SERVED: November 4, 1997
RESPONSE DUE: 12-5-97 - PROD. DUE: 12-15-97
PLACE: Soltman & O'Meara Warner Center Plaza 21700 Oxnard Street Suite 1750 Woodland Hills, CA 91367

***

SOLTMAN & O'MEARA 21700 Oxnard Street, Suite 1750 Woodland Hills, CA 91367-7307 (818) 593-2200
JOHN V. O'MEARA - State Bar No. 144416 Attorneys for Defendant STEPHEN D. LOWRY dba S.D. LOWRY CONSTRUCTION R39-009
August 12, 1997

Mr. Dallas R. Williams *520* Mesa Drive Ojai, CA 93023

Dear Mr. Williams:

My client has authorized me to accept service of your First Amended Complaint on his behalf. Please understand that my client has nothing to do with the architect and that you will have to serve him separately.
Very truly yours, John V. O'Meara

***

SOLTMAN & O'MEARA 21700 Oxnard Street, Suite 1750
Woodland Hiils, CA 91367-7307 (818) 593-2200
JOHN V. O'MEARA - State Bar No. 144416 Attorneys for
Defendant STEPHEN D. LOWRY dba S.D. LOWRY
CONSTRUCTION R39-009
September 19, 1997

Dallas R. Williams 520 Mesa Drive Ojai, CA 92023

Dear Mr. Williams:

We have been advised by our client, Stephen D. Lowry dba Lowry Construction Co. ("Lowry"), that you have forwarded mail directly to him as recently as September 16, 1997. As you know, Lowry is represented by counsel and, as such, you may not directly communicate with Lowry. Rather, you are required by California law to direct all inquiries and correspondence regarding Lowry to the above address. Please immediately remove Lowry from any mailing list that you maintain. Thank you for your anticipated cooperation in this regard.
Very truly yours, David F. Myers

***

SOLTMAN & O'MEARA 21700 Oxnard Street, Suite 1750
Woodland Hills, CA 91367-7307 (818) 593-2200
JOHN V. O'MEARA - State Bar No. 144416 Attorneys for
Defendant STEPHEN D. LOWRY dba S.D. LOWRY

CONSTRUCTION R39-009
December 11, 1997

Mr. Dallas R. Williams 520 Mesa Drive Ojai, CA 93023

Dear Mr. Williams:

Your facsimile of this date has been forwarded to me for response. Please be advised that the facsimile is replete with inaccuracies as follows:
1. Your telephone conversation on December 10, 1997 was with me, not John O'Meara;
2. This office has followed all applicable rules governing discovery in this matter;
3. Your claim that this firm has "conspired" with the County of Ventura, in any fashion, is not only inaccurate, but is simply ludicrous.
At least three (3) times during our brief telephone conversation, I specifically asked that you refrain from misstating my statements to you. Unfortunately, you have chosen to ignore my request as set forth above, necessitating this response to you. Please be advised that I dispute the assertions made in your facsimile on the grounds that the purported "admissions" are untrue and were never stated by me at any time.
Very truly yours, David F. Myers

***

SOLTMAN & O'MEARA 21700 Oxnard Street, Suite 1750
Woodland Hills, CA 91367-7307 (818) 593-2200
JOHN V. O'MEARA - State Bar No. 144416 Attorneys for
Defendant STEPHEN D. LOWRY dba S.D. LOWRY
CONSTRUCTION R39-009
May20, 1997

Mr. Dallas R. Williams 520 Mesa Drive Ojai, CA 93023

Dear Mr. Williams:

This office represents Mr. Lowry and his company in this action. By now you should have received the Motion to Dismiss that was timely filed and served by my office which reflects same. If you did not receive it, please contact the undersigned and I will forward it to you forth with.
As Mr. Lowry and his company are represented by counsel, please do not contact Mr. Lowry or send any documentation to him directly. Refer all such matters to the undersigned. Incidentally, Mr. Hank Williams is in no manner affiliated with my client. Very truly yours, John V. O'Meara

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Schifrin, Gagnon & Dickey, Inc. LESLIE M. SCHIFRIN PRESIDENT; PETER H. SCHIFRIN VICE PRESIDENT MARCIA J. WARREN CLAIMS MANAGER INSURANCE ADJUSTERS; PRIVATE INVESTIGATORS THIRD PARTY ADMINISTRATORS
December 9, 1997

Mr. Dallas R. Williams 520 Mesa Drive Ojai, CA 93023

RE: Insured Claimant Date of Loss Our File No.
S.D. Lowry ConstructionDallas WilliamsTo Be Determined 1846 243 10
Dear Mr. Williams:

I have been informed by my principal, Westco Claims Management Services, that at this point they are not in a position to offer any settlement in this matter. Rather, their position is one of investigation. Until such time as the

you as to which one, if any, my principal has retained. I am not in a position to provide that information at this time. Please also note that Schifrin, Gagnon & Dickey is not the insurance carrier for S.D. Lowry Construction. We are independent insurance adjusters who have been assigned by one of his insurance carriers to investigate this matter. Therefore, we have no discretion with regard to how the claim is handled or how your lawsuit will be handled. We are merely an investigative entity and not *the* actual insurance carrier. Please contact the undersigned, by telephone or in writing to arrange an opportunity for me to come out and inspect your property so that I may report back to the carrier with regard to the damages your residence has sustained.
Sincerely yours, SCHIFRIN, GAGNON & DICKEY. INC.
Greg J. Freeman /s/ Adjuster/Appraiser
14530 Delano Street, Suite 200 Van Nuys, California 91411-2819
(818) 909-9090 FAX (818) 909-7365 www.sgdinc.com

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SOLTMAN & O'MEARA 21700 Oxnard Street, Suite 1750 Woodland Hills, CA 91367-7307 (818) 593-2200
May 22, 1997
VIA HAND DELIVERY
U.S. District Court - Central District -255 E. Temple Street Los Angeles, CA 90012 - ATTN: Mr./Ms. Butler - Clerk of Dept.
"H-20" - Re: Williams v. County of Ventura, et. al.
Our Client: S.D. Lowry dba Lowry Construction
Case No.: CV 97-2487 ABC (SH)
Dear Mr./Ms. Butler:

The purpose of this letter is to confirm that three Motions to Dismiss are scheduled to be heard before the Hon. Stephen

J. Hillman on June 9, 1997. Two of the three motions are submitted on behalf of S.D. Lowry dba Lowry Construction ("Lowry").

To further confuse matters, the motions on behalf of Lowry have been filed by two different law firms, each retained by a different insurance company without knowledge of the other. Currently, these two motions are scheduled to be heard at different times, 9:30 a.m. and 2:00 p.m. The purpose of this letter is to request that the motions be re-set to be heard at the same time in the interests of efficiency and judicial economy. I request that the motions both be set for 2:00 p.m. because the third motion, brought on behalf of the County of Ventura, is also set for hearing at that time.

I appreciate that the multiplicity of motions has created some confusion. I believe that setting all of the motions to be heard at the same time, 2:00 p.m., will help to relieve some of the confusion and duplication of effort. Please confirm to me, in writing, the final schedule of the hearings relating to this case at your earliest convenience.
As an additional note, the motion papers submitted by this office in connection with the motion to dismiss of Lowry originally carried an erroneous case number on the caption page. This error has

been corrected by the filing of an amended caption page simultaneous with the delivery of this letter. If you have any questions regarding the forgoing, please do not hesitate to call me. Thank you for your assistance in this matter.

Very truly yours,
John V. O'Meara/s/ cc: All Counsel

SOLTMAN, SEDLEY & O'MEARA - 21700 Oxnard Street, Suite 1750 Woodland Hills, CA 91367-7307 - (818) 593-2200 JOHN V. O'MEARA - State Bar No. 144416 - Attorneys for Defendant STEPHEN D. LOWRY dba S.D. LOWRY CONSTRUCTION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Dallas R. Williams, an individual,
Plaintiff, Case No. 96-0570-E(AJB)

v.

COUNTY OF VENTURA; S.D. LOWRY CONSTRUCTION; S.D. LOWRY; HANK WILLIAMS; SUSAN LACEY; ROBI KLEIN;
JACALYN COHEN; TOM BERG; W.E. WINDROTH; TOM MELUGIN; STEPHEN BALL; SHARON LEWIS; BETTY KANE;
LINDA FINN; FLORENCE PURSHAN; SHEILA GONZALEZ;
and DOES 1 through 10, inclusive, Defendants.
NOTICE OF MOTION AND MOTION TO DISMISS OF DEFENDANT, STEPHEN D. LOWRY dba S.D. LOWRY CONSTRUCTION, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED - [FRCP 12(b)(6)]
DATE: 6-9-97 - TIME: 2:00 p.m. ROOM/DEPT.: H-20

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June, 1997 at 2:00 p.m., or as

PROPOSAL

S.D. Lowry Construction - General Contractor
Lic. No. 432140 - (805) 646-0744

181 N. Encinal Ave., Ojai, CA 93023

Architect: Hank Williams - Date of Plans: 7-11-87

Authorized Signature: Stephen D. Lowry /s/
Acceptance of Proposal: Dallas R. Williams /s/
Date of Acceptance: 7-20-87

***

December 3, 1997 Production of Documents by defendant Lowry. John V. O'Meara /s/

PERMIT, WHEN PROPERLY VALIDATED
THIS IS YOUR PERMIT.

HANK WILLIAMS, Architect Engineer Disigner,
State License [blank] issued by:

W.E. Windroth /s/ 7/21/87 & 7/30/87

STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 4(c)(C)(i):

> Pursuant to the law of the State in which the district court Is held for the service of summons...

Federal Rule of Civil Procedure 5(a):

> ...every order required by its terms to be served...

Federal Rule of Civil Procedure 8(a)(2):

> a short and plain statement of the claim showing that the pleader is entitled to relief,...

Federal Rule of Civil Procedure 12(b)(1):

> lack of jurisdiction over the subject matter,...

Federal Rule of Civil Procedure 12(b)(6):

> Failure to state a claim upon which relief can be granted,...

Federal Rule of Civil Procedure 54(b):

> or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the parties shall not terminate the action as to any of the claims or parties,...

Federal Rule of Civil Procedure 55(a):

> When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

Federal Rule of Civil Procedure 77(c):

> for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk;

Federal Rule of Civil Procedure 12(a):

> A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant,...

United States District Court
Central District of California
Western Division

CIVIL MINUTES -- GENERAL

Case No. CV 97-2487-ABC(SH) Date May 16, 1997

Title Dallas R. Williams v. County of Ventura, et al

DOCKET ENTRY

PRESENT: Hon. STEPHEN J. HILLMAN, MAGISTRATE JUDGE

Sandra Bulter, Deputy Clerk

This Court is in receipt of 1) a Motion to Dismiss filed on May 6, 1997 by defendants Stephen D. Lowry dba S.D. Lowry Construction; 2) a Motion to Dismiss filed on May 6, 1997 by defendants S.D. Lowry Construction and S.D. Lowry; and 3) a Motion to Dismiss filed on May 6, 1997 by Defendants County of Ventura,...